

## TEXT OF PROPOSED REGULATIONS

In the following text, underlining indicates added language, strikethrough indicates deleted language.

Section 3025 is amended to read:

### **3025. Department of Justice DNA and Forensic Identification Data Base and Data Bank.**

Subsection (a) is amended to read:

(a) All inmates and parolees committed to the custody of the department after having been convicted of, found guilty of, having pled guilty or no contest to, or having been found not guilty by reason of insanity for, any offense listed in Penal Code (PC) section 296(a), or whose records indicate a prior conviction for such an offense, shall, ~~after receiving written notification in accordance with PC section 298.1,~~ provide all of the following required specimens, to be submitted to the Department of Justice (DOJ) as soon as administratively practicable:

- (1) Two Blood Specimens.
- (2) One Saliva Sample.
- (3) Two Right Thumb Print Impressions.
- (4) Full Right and Left Full Palm Print Impressions.
- (5) Writer's Palm Print Impression.

Subsection (b) is unchanged.

(b) The listed specimens shall be provided under the following circumstances, unless the inmate's central file or other records indicate that all required specimens have already been obtained:

- (1) Whether or not the offense predated the enactment of the DNA and Forensic Identification Data Base and Data Bank Act of 1998, or any amendments to it;
- (2) Whether or not the court advised the convicted person of this requirement;
- (3) Whether or not the punishment for the offense was stayed; however, offenses which have been stricken or dismissed shall not require collection of these specimens;
- (4) If the inmate or parolee was convicted of a state or federal offense in another state which would constitute an offense as listed in PC section 296(a);
- (5) If notification is received from the DOJ that an inmate's or parolee's specimens already taken for any purpose are not usable for any reason.
- (6) Whether or not the offender was a juvenile or adjudged a ward of the court at the time of the offense;

**Subsection (c) is amended to read:**

(c) Newly committed inmates and persons returned to custody based upon a violation of parole, furlough or any other type of release, who meet the criteria established in ~~section 3025(a)~~ PC section 296(a), shall, ~~after receiving written notification in accordance with PC section 298.1,~~ provide the required specimens while at the reception center or as soon as practicable after their transfer to an institution/facility.

**Subsection (d) is amended to read:**

(d) Parolees identified as meeting the criteria established in ~~section 3025(a)~~ PC Section 296(a) shall provide the required specimens at a location designated by the local law enforcement agency, as notified by parole unit staff.

**Subsection (e) is amended to read:**

(e) Only medical staff trained and certified to do so shall draw blood; the drawing of blood ~~and taking of saliva~~ samples shall be done in accordance with medical standards. ~~The blood vials and saliva samples shall be processed in accordance with PC section 298.~~ The specimens, samples, and print impressions collected pursuant to [Penal Code, Part 1, Title 9, Chapter 6, Articles 1 through 7 \(sections 295 et seq.\)](#), shall be forwarded immediately to the DOJ. [Saliva samples shall be deposited on buccal swabs provided by the DOJ.](#) A right thumbprint and a full palm print impression of each hand shall be taken on forms prescribed by the DOJ. The palm print forms shall be forwarded to and maintained by the Bureau of Criminal Identification and Information of the DOJ. Right thumbprints ~~also impressions~~ shall be taken at the time of the withdrawal of blood ~~is drawn~~, and shall be placed on the forms and the blood vial label. ~~using procedures as specified in PC section 298.~~ The blood vial and thumbprint forms shall be forwarded to and maintained by the DNA Laboratory of the DOJ.

**Subsection (f) is amended to read:**

(f) Only designated medical, custody, ~~and/or~~ parole staff and/or [local law enforcement](#) shall handle forms or specimens after their collection.

**Subsection (g) is unchanged.**

(g) If a person has been convicted of a state or federal offense which would constitute an offense as listed in PC 296(a) and is transferred or paroled from another state, an agreement to provide these specimens shall be made a condition of acceptance for supervision in this state.

**Subsection (h) is adopted to read:**

(h) Any inmate or parolee who refuses to give any or all of the following, blood specimens, saliva samples, or thumb or palm print impressions as required by [Penal Code, Part 1, Title 9, Chapter 6, Articles 1 through 7 \(sections 295 et seq.\)](#), after he or she has received written notice that he or she is

required to provide specimens, samples, and print impressions is guilty of a misdemeanor. An inmate who refuses shall also be subject to progressive discipline pursuant to [California Code of Regulations, Title 15, Division 3, Chapter 1, Subchapter 4, Article 5 \(Section 3310 et seq.\)](#).

**Subsection (i) is adopted to read:**

(i) The use of reasonable force, as defined in Section 3268(a)(1), shall not be authorized without the prior written authorization of the supervising officer on duty. The authorization shall include information that reflects the fact that the offender was asked to provide the requisite specimen, sample, or impression as required by law, and that he or she refused to do so.

**Subsection (j) is adopted to read:**

(j) The use of reasonable force, as defined in Section 3268(a)(1), shall be preceded by efforts to secure voluntary compliance.

**Subsection (k) is adopted to read:**

(k) If the use of reasonable force to obtain DNA includes a cell extraction, the extraction shall be videotaped. The videotaping shall depict all correctional personnel directly involved and the advisement to the inmate that the requisite specimen, sample or impression is required. All incidents that required the use of reasonable force to obtain DNA samples shall be tracked and maintained by the institutional DNA coordinator and forwarded to the assistant director, Law Enforcement Investigative Unit (LEIU).

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 295 through 300.3 and 5054, Penal Code.

**Section 3315 is amended to read:**

**3315. Serious Rule Violations.**

**Subsection (a) is amended to read:**

**Subsections (a)(1) and (a)(2) are unchanged.**

**Subsection (a)(3) is amended to read:**

(3) Serious rule violations include but are not limited to:

(A) Misconduct reportable to the inmate's releasing authority.

(B) Theft, destruction, misuse, alteration, damage, unauthorized acquisition or exchange of personal or state property amounting to more than \$50.

(C) Hideout, preparation to escape, or possession of escape paraphernalia.

(D) Tattooing or possession of tattoo paraphernalia.

(E) Manufacture of alcohol or possession of any controlled substance, unauthorized drug, intoxicant, or illegal substance.

(F) Being under the influence (use) of alcoholic beverages, controlled substances, unauthorized

drugs or intoxicants in an institution, community correctional facility, or camp.

(G) Possession of five dollars or more without authorization.

(H) Acts of disobedience or disrespect which by reason of intensity or context create a potential for violence or mass disruptive conduct.

(I) Willfully inciting others to commit an act of force or violence.

(J) Refusal to perform work or participate in a program as ordered or assigned.

(K) Recurring failure to meet work or program expectations within the inmate's abilities when lesser disciplinary methods failed to correct the misconduct.

(L) Participation in a strike or work stoppage.

(M) A repeated pattern of administrative rule violations for the same offense.

(N) Mail or visiting violations presenting a threat as described in (2) above.

(O) Harassment of another person, group, or entity either directly or indirectly through the use of the mail or other means.

(P) Throwing any liquid or solid substance on a nonprisoner.

(Q) Unauthorized possession of departmental records or documents which could affect any inmate's release status.

(R) Refusal to submit to a test for controlled substances.

(S) Refusal to provide blood specimens, a saliva sample, and palm and thumb print impressions pursuant to Penal Code, [Part 1, Title 9, Chapter 6, Articles 1 through 7 \(sections 295 et seq.\)](#), ~~through 300.3~~, after receiving written notification in accordance with PC section 298.1 that such specimens and samples must be provided. ~~The samples and specimens may be requested again, after 30 days or more following any such refusal. Compliance shall not be compelled forcibly, unless specific written judicial authority to do so has been obtained.~~

(T) Participation in gambling.

(U) Late return or failure to return from a temporary community release or leave.

(V) Unauthorized possession of materials or substances which have been diverted or altered from the original manufactured state or purpose with the potential to be made into a weapon; explosive or explosive-making material; poison, caustic substance; any destructive device.

(W) Self mutilation or attempted suicide for the purpose of manipulation.

(X) Involvement in a conspiracy or attempt to do any of the above.

**Subsections (b) through (g) are unchanged.**

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 295 through 300.3, 530, 532, 646.9, 647, 653m, 2931, 2932, 2933, 4573.6, 5054, 5068, and 12020, Penal Code.